

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
(Indianapolis Division)**

RED BARN MOTORS, INC.,	*	DOCKET NO. 1:14-cv-01589-TWP-DKL
PLATINUM MOTORS, INC.,	*	
MATTINGLY AUTO SALES, INC.,	*	CLASS ACTION
Individually, and on behalf of other members of the general public similarly situated	*	
	*	
	*	
v.	*	
	*	
COX ENTERPRISES, INC.,	*	
COX AUTOMOTIVE, INC.,	*	
NEXTGEAR CAPITAL, INC.,	*	
F/K/A DEALER SERVICES	*	
CORPORATION, successor by merger with Manheim Automotive Financial Services, Inc., and JOHN WICK	*	
	*	

**PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON BREACH OF CONTRACT CLAIM**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Red Barn Motors, Inc., Platinum Motors, Inc., and Mattingly Auto Sales, Inc., and respectfully move this Court for partial summary judgment on their breach of contract claim against Defendant, NextGear Capital, Inc. f/k/a Dealer Services Corporation (“NextGear”) pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-1.¹

¹ The parties are aware of the summary judgment briefing procedures set forth in the Courtroom Procedures & Trial Practice Before the Honorable Tanya Walton Pratt. However, the parties are filing their respective dispositive motions today in accordance with the deadlines established in this case. See Dkt. 177. If the Court would prefer, the parties will schedule and consolidate additional briefing in accordance with the Courtroom Procedures.

There is no genuine issue as to any material fact relating to liability or damages on Plaintiffs' breach of contract claim, and Plaintiffs are entitled to a judgment as a matter of law. There is no dispute that each Plaintiff entered into a contract with NextGear; that NextGear routinely charged interest beginning on the floorplan date rather than on the date of advance; or that there was for certain transactions a delay between the date NextGear began charging interest and the date NextGear made a payment on Plaintiffs' behalf. Further, there is no dispute as to the amount of interest NextGear charged Plaintiffs on their transactions prior to making advances on their behalf, *i.e.*, the existence or amount of Plaintiffs' damages arising from NextGear's breach of contract. The only dispute is a legal one—whether NextGear's practice of charging interest prior to making an advance constituted a breach of its contract with Plaintiffs. That issue, the interpretation of the contract, is appropriately decided on summary judgment, and because the contract is ambiguous on its face, it must be construed against NextGear, its drafter.

For these reasons, set forth more fully in the accompanying memorandum in support of this motion, Plaintiffs are entitled to partial summary judgment on both liability and damages on their breach of contract claim.

Respectfully submitted,

/s/ Kerry A. Murphy

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of April, 2017, a copy of the foregoing was filed electronically. Notice of the filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

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